



## ***Benton County Planning Board***

September 5, 2012

6:00 p.m.

Benton County Administration Building  
215 East Central Avenue  
Quorum Courtroom, 3rd Floor Suite 324

### **Meeting Minutes**

#### **PUBLIC HEARING**

**Call to Order:** 6:04 p.m.

**Roll Call:** Jim Cole, Mark Curtis, Lane Gurel, Starr Leyva, John Pate, and Ashley Tucker were present.

**Disposition of Minutes:** 08/15/12

Mark Curtis motioned to approve the minutes, as amended, to remove his name on page 3, paragraph 2, and place Lane Gurel's name there instead. Starr Leyva seconded the motion. The minutes were unanimously approved as amended.

**General Public Comment:** None

Lane Gurel introduced Rinkey Singh, who has been hired as the new Planning Division Manager.

#### **Old Business:**

**A. Rhonda McKinney** – Variance #12-206, JP District 1, 11600 Rolling Hills Dr., Rogers, AR 72756  
Staff updated the Board on updates for this project since the TAC meeting held August 15, 2012.

M.J. McGetrick stated that the site plan has been updated, and provided it on the PowerPoint presentation before the Board. During the August TAC meeting, the applicant showed the Board three possible locations for a 40' x 60' shop building placement on the property. Ms. McGetrick stated that the applicant has since selected a new location for the building, which was illustrated on the site plan in the northwest corner of the property. Ms. McGetrick stated that she was trying to provide the Board with a better idea of the buildable area on the lot, along with 10' contour lines. The applicant asked for variances from the 25' front and 10' side building setbacks due to the shape of the lot and the presence of utility lines on the property. The applicant provided justification for the variance requests based on the topography on the property which includes a valley at the rear of the property and the fact that there is setback is 15' on each side of the utility pole. The side yard setback variance would be 8' from the property line setback requirement of 10'. This would place the building about 2' from the property line.

Ms. McGetrick explained that the site plan was not drawn to scale, but was a representation of the property lines and proposed building.

Lane Gurel said he understood that the hardships are the electrical line, the topography, and the front setbacks from the roadway, and that the staff recommends that any additional building on the property would require Planning Board approval, and that all Carroll Electric setbacks must be met.

Mr. Gurel asked the applicant if the setbacks on the property curve along with the road, at the lower left of the drawing. Ms. McKinney said yes, that was correct.

Ms. McGetrick confirmed that the site plan drawing was not exact, and as shown on the aerial photo, the property is wider at the bottom rather than narrower.

Ms. McKinney stated that she provided the Planning Board with the alternative field, as requested, and that she is requesting a variance from the 10' setback in order to save a tree that is in front of the proposed shop location. As there are only four trees on the property, she stated that she was reluctant to remove the tree and that is why the variance is being requested.

Ms. Starr Leyva stated that she would like to see a copy of the permit for the alternative field, and noted that the roadway drawn on the site plan goes through that alternate area, which is not allowed by State standards.

Ms. McKinney replied that the roadway was drawn on the site plan because she thought the Board wanted to see the driveway, and it was penciled in. The applicant would prefer to put the driveway in another location, further down on the property, and would prefer not to use the one drawn on the site plan.

Lane Gurel asked if either of the two power poles were located in the septic area. Ms. McKinney confirmed that the power lines were not located in the septic area; she further clarified that one was located on the side by the fence, and the other was in the middle of the pasture. Mr. Gurel asked if staff knows how Carroll Electric feels about having a septic system near the power poles. Ms. McGetrick stated that to her knowledge it was not a problem. Mr. Gurel asked if the applicant had an alternate septic area that was not located in the roadway. Ms. McKinney stated that the road was not going to be placed where it is shown on the site map, and that no driveway exists in that location. The area is now a place where she lets her horses out. Mr. Gruel asked if this was the former location of a mobile home. Ms. McKinney stated that the mobile home was located in a corner of the property, and the ground there is "dug out" 2' deep. Ms. McGetrick stated that the former mobile home location is above the 1360' contour line. Mr. Gurel asked for clarification about the setback dimensions – 10 of 15 feet along the road, and 8' in the back with only 2' from the property line.

Mr. Ashley Tucker asked the applicant if horses and cattle were kept in the same area as the shop. Ms. McKinney stated that a fence had been placed there to separate horses and cattle from that area. Mark Curtis said he was confused, because the way he reads the vicinity map, there is a 15' setback, not 10' as stated. Lane Gurel said the 10' easement was a utility easement, and asked staff if the setback was 15' or 5'. Ms. McGetrick stated that the setback was 15' from the property line and 35' from the centerline of the roadway. Lane Gurel stated that the other 25' is setback, leaving 15' more of the 25', but that the applicant wants to move the building all the way up to the utility easement, which would be 10' from the property line instead of 25' as regulations require. The applicant is requesting that the side setback, which regulations state must be 10', be a variance so they can place the building 2' from the property line on the side of the property.

Ms. McKinney stated that she did have pictures of the property that shows a slope, going uphill, that would make it difficult to place the shop in another location. If the doors were placed there, it would be necessary to drive uphill and go under power lines to get to the shop. Committee members reviewed alternative locations for the proposed building that may alleviate the need for the variance. The applicant restated her wish to review the requested variance.

Board Members discussed whether the building could be situated so that it did not encroach on the setback, or if trees could be transplanted to replace the one that would be lost, should the tree need to be removed. Mr. Gurel stated that he was reluctant to turn the applicant down if a compromise could be reached and the design could be changed to suit regulations. Mr. Tucker said he was sympathetic with wanting to save a tree, but he wasn't certain if saving a tree rises to the level of a hardship. He questioned whether saplings could be moved from the wooded area to replace the tree, and was uncertain that putting the building 2' from the property line was a good long-term solution.

Mr. Gurel stated that his thought is that he didn't want this case to become a blueprint for how the Board handled variances to setbacks in general.

Mr. Jim Cole stated that the applicant had made a request, shown the topography and the power line easement, and the shape of the lot, and perhaps this was enough information for the Board to make a decision and take a vote. Mr. Gurel agreed that this is what is being requested.

Ms. McKinney stated that she had tried to go through and measure the property, and the problems she is facing is that half of it cannot be used. "There's an angle that goes across the widest end, and that is why we chose that location," she said. "As it goes up, there is not as much room." Mr. Gurel stated that the site plan does not show the property line to scale. Mr. Christopher Ryan, Benton County Director of Planning and Environmental Services, stated that he sensed more sympathy from the Board for the front yard setback than the side yard setback. However, the two are bundled in one request, and the two together may not be successful. He asked her to consider changing her request to remove the side yard setback request and seek other options. "The other option is turning it 90 degrees and having it face the north property line or face inward toward the parcel, and that would probably be based on

where we would like the driveway to be,” Mr. Ryan said. “The two best options is either orienting the doors outward toward the property line, or having the driveway near the property line, or putting it straight back.”

Mr. Gurel asked for clarification on how many feet there are from the 50’ setback to the point where there are still 50’ from the . Ms. McGetrick stated that it was more than 40’, and Ms. Levya stated she thought it was 44’.

Mr. Gurel said, “So, it is basically, from a 50’ setback to the edge of the building to the road, maybe 44 feet.” Mr. Gurel asked the applicant if she wanted to proceed with the request as it is or if wanted to amend her request. Ms. McKinney stated she wanted to go ahead with the vote.

Mr. Gurel stated that the property is troubled because of the topography and the easements; and that the aerial photo he is looking at appears to have room for the building without encroaching on the property line easement. He stated that the Board is sympathetic to her problem in using the property, and it appears that the buildings on the other side of the street are all closer than 50 feet from the centerline, so it looks as though the variance she is requesting is already established in that area. He again asked if she wanted to change her request to only consider the front line easement and not the side yard easement. Ms. McKinney stated again that she wished the Board to vote on the variances as proposed.

Mr. Gurel asked staff if this request is turned down, would the applicant would have to wait a year to request it again. Mr. Ryan stated no, not on a variance request. Mr. Gurel asked if there were any public comment on this project. No public comment was made. Mr. Cole asked for clarification on what the Board was voting on. Mr. Gurel said the Board would be voting on the two variances as proposed by the applicant. Mr. Tucker asked for clarification on whether the Board was voting on the site plan, and Mr. Gurel said no, the vote was only on the variances.

Mr. Ryan stated that perhaps the applicant would want to pull the request for the side setback. The applicant stated she wanted the Board to vote on it the way it is. Mr. Gurel said that the worst case scenario is that she would have to try it again in two weeks, should the Board vote against the variances.

Mr. Cole made a motion to approve the setback variances with stipulations that the Carroll Electric utility easements must be met. Mr. Gurel asked the Board for comments before the vote. Mr. Curtis said he doesn’t have a problem with the variance request from the roadway, but he does from the side. He asked what the property on the other side looks like and what is located there. Ms. McKinney said the property on the other side of the line is pasture, with a house to the left side; also that half the valley was in that property and the land wraps around the valley, with pasture land for his horse. Ms. McGetrick stated that if the applicant chose to move the driveway with a different entrance from the County road, she would have to get approval from the County Road Department. The applicant said she had already spoken to the Road Department regarding the driveway, and they indicated that her proposed change would be acceptable.

Mr. Gurel called for a second on the motion. Mr. Tucker seconded the motion to vote to approve the setback variances with stipulations that the Carroll Electric utility easements must be met. Mr. Gurel called for the vote and John Pate, Mark Curtis, and Jim Cole voted yes, with

Starr Glenn, Lane Gurel and Ashley Tucker voting no. Mr. Gurel said the vote, tied at 3-3, failed to pass the motion, as it was not a majority, and asked the Board members voting no to express their reasons for voting against the motion.

Mr. Gurel stated that he was not comfortable with the Board cutting down so much of the setback in two directions, and suggested that the applicant consider either a different size building or this size in a different location.

Mr. Tucker stated that the front yard setback was not a concern, but the side yard setback was, as it was not sufficient to open a door without encroaching on the other property. He said that this does not rise to the level of a hardship. He felt that there is some other configuration to achieve what the applicant needs with less impact.

Ms. Leyva stated that she would agree to the front yard setback, but not with the side yard setback, and said that 2' was not sufficient for a door to be opened on that side.

Mr. Gurel stated that it was not too late to add another comment. "One of the main reasons that the county has a 10' setback on the sidelines so that there is a 20' separation of buildings in case of a fire," Mr. Gurel said. "There's nothing to permit your neighbor from coming in with a 10' setback, and as a Board we need to prevent that." Mr. Gurel stated that he felt the applicant needs to work on this project further, and suggested that she find some way to do a drawing to scale, as the dimensions of the property and suggested improvements were not exact, and it would be helpful for the Board to see the exact distances.

Ms. McKinney stated that she would come back to the Board with a new proposal.

Mr. Gurel then asked if anything else was to come before the Board, and hearing none, closed the public hearing at 6:44 p.m.

**Decision:** The following requested variance:

Required front setback of 25' along County Road versus 15' (proposed) and,  
Required side setback of 10' versus 2' (proposed) was DENIED.

#### **TECHNICAL ADVISORY COMMITTEE**

**Call to Order: 6:45 p.m.**

**Old Business:** None

**New Business:**

**A. ARCO Excavation and paving** – LSD #12-199, JP District 6, 10287 E. Hwy 72, Pea Ridge, AR  
Represented by Chris McDaniel, Bentonville.

Mr. Lane Gurel recognized Chris McDaniel and invited him to speak to the Board.

Mr. McDaniel stated that Arco wants to add two additional offices to the house while they are tearing it apart, so if more room is needed later, they won't have to disrupt the work being done there. He stated that Benton County Planning Staff has a site plan showing one side of the existing structure.

"The original plan showing a gravel area, we want to place a hard surface there," Mr. McDaniel said. "We are going to pave that."

Mr. Gurel asked if the change involved adding on 16' to the existing structure, and Mr. McDaniel stated that was correct. Mr. Gurel then asked for Staff comments.

**Staff Comments:** M.J. McGetrick said that from the Staff's point of view the additional square footage and the original site plan met requirements. She stated that regulations do not require additional parking, but since they are adding it the Staff would like to see the square footage of the additional parking area, plans for striping, and the size of the parking stalls. The applicant has provided a letter from the engineer indicating that the additional built area will not create additional drainage problems on the property.

Mr. Christopher Ryan, Benton County Director of Planning and Environmental Services, stated that Planning Staff wants the engineer to take another look at the site plan with the new parking area to confirm that it will not affect storm water runoff. Mr. Ashley Tucker asked which way the water from the parking area would drain. Mr. McDaniel stated that it would drain west, to the highway, and they are placing a drainage ditch along the front of the property.

Mr. Gurel asked the applicant if he had given public notice to this revision, and the applicant said no. Mr. Gurel said that was just as well, because he wonders if this change could be an adjustment to the plans already approved by the Planning Board previously. Mr. Ryan stated that the applicant could submit it as a revised site plan. Mr. Gurel said that if a vote were required, as the Board is not currently in a public hearing, Mr. McDaniel will need to come back in two weeks. Lane Gurel, Mark Curtis and James Cole all stated separately that the revisions to the site plan would not have changed their votes to approve the project.

Mr. Gurel also stated that because this site plan adjustment is minimal, he hopes the applicant will not have to pay an additional fee. Mr. Ryan stated that the applicant was charged a standard \$300.00 fee, and he may want to consider requesting a refund. Mr. Gurel suggested that the applicant come back to the Board in two weeks so the request could be handled as a site plan adjustment. Mr. Tucker said the Board could waive its requirement to review the adjustment by a 2/3 majority vote. Mr. Gurel stated that in order for the Board to waive approval, the adjustment must be approved by staff. Mr. Cole stated that the applicant should come back for the September 19<sup>th</sup> public hearing, but will not have to give notice to landowners. Mr. Curtis concurred that a site plan adjustment will not need re-notification.

“We need to be accommodating to business as we can be,” Mr. Curtis said. “We love businesses coming in when we can make it as simple as possible.” Mr. McDaniel stated that he appreciated that.

**Discussion:**

Mr. Gurel asked if there were any other issues before the Board. Mr. Ryan stated that Indian Hills had been removed from the agenda, as his research confirmed that technically, the land is not a subdivision and no lot split is required.

However, Mr. Ryan stated that the County Attorney believes that instead of waiting for the new regulations to be approved, the Board should be proactive and make adjustments to the way lot splits regulations read. Mr. Ryan said the way the regulations read, it is not clear what the intentions of the regulations are. In a workshop, Mr. Ryan said, the Board could share how they wish lot splits to be decided, and construct a model and develop a standard based on the impact of investment coupled with the quality of life. Mr. Gurel said vague regulations make it difficult for the Planning Board and does not adequately serve the needs of County residents.

The Board discussed how the proposed regulation changes would be communicated between Board members and Staff. Mr. Cole suggested that proposed changes be posted on Dashboard. Mr. Ryan suggested that both posting on Dashboard and via email with a link and attachment. Mr. Curtis asked if the Board would be able to comment on the proposed regulation changes before they were sent to the Quorum Court’s legislative committee for review. Mr. Ryan stated that it would be a good idea to invite certain members of the Quorum Court to join the Planning Board in going over the regulations, before sending them to the legislative committee. He also said he wanted Elizabeth Bowen, Administrator of General Services, to comment and have input before inviting Quorum Court members to the Planning Board discussion on Regulations. Lane Gurel stated that the litmus test of the new regulation would be to define who is served, and that he believes the County resident should be the main focus of the redraft.

There being no further discussion, the TAC meeting adjourned at 7:08 PM.